

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

COUNTRYSIDE INDUSTRIES, INC.

Plaintiff,

**V.**

CONSTRUCTION & GENERAL LABORERS'  
DISTRICT COUNCIL OF CHICAGO AND  
VICINITY; LABORERS' INTERNATIONAL  
UNION LOCAL 118

Defendants.

**No. 08 CV 3108**

Judge Manning

Magistrate Judge Schenkier

LABORERS' INTERNATIONAL UNION  
LOCAL 118; CONSTRUCTION &  
GENERAL LABORERS' DISTRICT COUNCIL  
OF CHICAGO AND VICINITY

Third-Party Plaintiffs,

**V.**

RAGNAR BENSON CONSTRUCTION, LLC  
AND THE ARBORETUM OF SOUTH  
BARRINGTON

### Third-Party Defendants.

## **MOTION TO FILE THIRD-PARTY COMPLAINT**

**NOW COMES**, the Laborers' International Union Local 118 and Construction & General Laborers District Council of Chicago and Vicinity (the "Defendants") by and through their attorney, MARC M. PEKAY, and hereby

moves to add Ragnar Benson and The Arboretum of South Barrington as Third-Party Defendants. In support of this Motion, Defendants (Third-Party Plaintiffs) state as follows:

1. Countryside Industries has filed a cause of action against Local 118 and the Laborers' District Council alleging that they engaged in improper picketing.

2. Prior to such picketing, the Defendants maintain that Ragnar Benson, The Arboretum and Countryside provided false information to the Union which resulted in the pickets.

3. Ragnar Benson and The Arboretum were well-aware of the issues in this case.

4. The Defendants assert that if they are responsible for any damages to Countryside, Ragnar Benson and The Arboretum should be responsible for these damages.

**WHEREFORE**, the Laborers' International Union Local 118 and the Construction & General Laborers District Council of Chicago and Vicinity move for leave to file Third-Party Plaintiffs' Complaint.

Respectfully Submitted,

By: s/Marc M. Pekay  
MARC M. PEKAY, P.C.

30 N. LaSalle Street  
Suite 2426  
Chicago, IL 60602  
(312) 606-0980

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

COUNTRYSIDE INDUSTRIES, INC. )  
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Plaintiff, )  
v. ) **No. 08 CV 3108**  
) Judge Manning  
) Magistrate Judge Schenkier  
)  
CONSTRUCTION & GENERAL LABORERS' )  
DISTRICT COUNCIL OF CHICAGO AND )  
VICINITY; LABORERS' INTERNATIONAL )  
UNION LOCAL 118 )  
)  
Defendants. )

LABORERS' INTERNATIONAL UNION  
LOCAL 118; CONSTRUCTION &  
GENERAL LABORERS' DISTRICT COUNCIL  
OF CHICAGO AND VICINITY

Third-Party Plaintiffs,

v.

RAGNAR BENSON CONSTRUCTION, LLC  
AND THE ARBORETUM OF SOUTH  
BARRINGTON

Third-Party Defendants.

### THIRD-PARTY PLAINTIFFS' COMPLAINT

**NOW COMES**, Laborers' International Union Local 118 and the Construction & General Laborers District Council of Chicago and Vicinity (the "Union") by and through their attorney, MARC M. PEKAY, and hereby files this Third-Party Complaint. In support of this Complaint, the Union states as follows:

1. Plaintiff, Countryside Industries, Inc., has filed a Complaint against the Union for damages under §303 of the Labor Management Act, 29 U.S.C. §187, and an alleged violation of 29 U.S.C §158 (B)(4).

2. Ragnar Benson Construction, LLC (hereinafter "Ragnar Benson") is an Illinois Limited Liability Company performing construction work and is an employer engaged in commerce.

3. The Arboretum of South Barrington (hereinafter "Arboretum") is a commercial development currently being constructed in South Barrington, Illinois.

4. Local 118 is a Labor Organization that conducts business and has an office within this judicial district.

5. The Construction & General Laborers' District Council of Chicago and Vicinity is a Labor Organization that conducts business and has offices within this judicial district.

6. The Arboretum is a commercial development in South Barrington in which they are erecting stores and other commercial property.

7. The Arboretum entered into a contract with Ragnar Benson whereby Ragnar Benson was the general contractor for certain construction work to be performed at the Arboretum.

8. Part of the work involved in the Arboretum was the installation of brick paving.

9. On information and belief, the Arboretum and Ragnar Benson entered into an oral agreement whereby Ragnar Benson would be the general contractor for the brick paving work at the Arboretum.

10. In November, 2007, Ragnar Benson requested and secured bids from contractors regarding the installation of the brick paving.

11. The Unions have a Collective Bargaining Agreement with Ragnar Benson, which requires, *inter alia*, that Ragnar Benson may subcontract work to be performed at a jobsite to only those companies that have a Collective Bargaining Agreement with laborers.

12. Plaintiff, Countryside Industries, Inc., an Illinois Corporation, does not have a Collective Bargaining Agreement with the Union.

13. By letter dated March 24, 2008, Marty Flanagan, President and Business Manager of Local 118 notified Ragnar Benson that any subcontracting work had to be performed pursuant to the subcontracting clause in the Collective Bargaining Agreement (Exhibit A).

14. On or about April 22, 2008, Laborers' Local 118 filed a grievance against Ragnar Benson regarding the subcontracting of the brick paving work to Countryside. (Exhibit B).

15. On or about April 23, 2008, after receiving the notice of the grievance, a meeting was held between Ragnar Benson, representatives of Countryside and representatives of Operating Engineers Local 150 (a labor organization performing work within this district).

16. On information and belief, at the meeting (set forth in paragraph 15), Countryside, Ragnar Benson and representatives of Operating Engineers Local 150 recognized that Ragnar Benson had violated the Collective Bargaining

Agreement between Ragnar Benson and the Union by subcontracting work to Countryside.

17. On information and belief, at the meeting on or about April 23, 2008, Ragnar Benson and Countryside conspired

- a. To avoid Ragnar Benson's obligation under the Collective Bargaining Agreement with the Laborer's Union by claiming that Ragnar Benson had not subcontracted the work.

- b. To inform the Laborer's Union that the Arboretum had contracted the brick paving work directly to Countryside.

- c. To have the Arboretum claim that they had an oral agreement with Countryside to perform the brick paving work.

- d. To recognize that by informing the Laborer's Union that there was no contract between Ragnar Benson and Countryside, that the Laborers were limited to engaging in area standard picketing against Countryside.

- e. To recognize and conspire, that if any action was taken by the Laborers Union that they would maintain that it was in furtherance of the grievance.

- f, To plan to file unfair labor practice charges against the Laborer's Union at the National Labor Relations Board and present testimony to stop any such picketing.

- g. To cooperate in preventing the Laborers' Union from engaging in any valid area standard picketing.

18. Following the April 23, 2008 meeting between the Operating Engineers, Ragnar Benson and Countryside, Ragnar Benson sent a letter to the Union stating that this work was not subcontracted to Countryside by Ragnar Benson. (Exhibit C).

19. In reliance upon the statements of Ragnar Benson that they had not subcontracted the work to Countryside, the Union on or about May 16, 2008, discovered Countryside performing work at the Arboretum worksite and investigated whether Countryside was paying what the laborers assert is their area standard wages.

20. Local 118 discovered that employees of Countryside performing brick paving work at the Arboretum were not receiving the laborers' area standard wages.

21. The Union, in reliance upon the claim that Ragnar Benson had not subcontracted work to Countryside, Local 118, on May 19, 2008, engaged in informational picketing at the Arboretum worksite notifying the public that Countryside did not pay area standard wages.

22. Thereafter, the Arboretum maintained that they had an oral agreement with Countryside for the installation of brick paving. This action was engaged in to mislead the Union and to avoid Ragnar Benson's obligation under their Collective Bargaining Agreement.

23. Area Standard Picketing is a form of free speech and protected by the First Amendment to the United States Constitution.

24. The actions and statements of Countryside, Arboretum and Ragnar Benson were to induce the Union into believing that Ragnar Benson was not responsible for the installation of the brick sidewalks.

25. These actions of Ragnar Benson, the Arboretum and Countryside Industries, Inc. amounted to conspiracy to commit fraud against the Union.

26. The Union justifiably relied upon Ragnar Benson's statements that Ragnar Benson had not subcontracted the work to Countryside.

27. Countryside filed charges at the NLRB alleging that the conduct of the Union in engaging in area standard picketing on May 19, 2008 was aimed at preventing Ragnar Benson from doing business with Countryside.

28. Based upon the Charges filed by Countryside, and based upon Ragnar Benson's claim that they did not have a contract with Countryside, the Laborers' union has incurred attorneys' fees and costs in defending the charge at the NLRB and this lawsuit that was filed by Countryside against the Laborers' union.

29. The Laborers Union is entitled to indemnification and contribution from Ragnar Benson and the Arboretum for all sums for which the Laborer's Union may be adjudged liable with respect to the claims asserted in the Union in the Complaint filed by Countryside.

**WHEREFORE,** Laborers' International Union Local 118 and the Construction & General Laborers District Council of Chicago and Vicinity moves:



(a.) Judgment be entered in favor of Third-Party Plaintiffs and against Ragnar Benson and the Arboretum for all sums that may be awarded Countryside.

(b.) All attorney fees and costs incurred herein.

(c.) Any and all other further relief this Court deems appropriate.

Respectfully Submitted,

By: s/Marc M. Pekay  
MARC M. PEKAY, P.C.

30 N. LaSalle Street  
Suite 2426  
Chicago, IL 60602  
(312) 606-0980

TEL: 847-394-8007  
FAX: 847-394-4823

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**LABORERS LOCAL 118**  
832 EAST RAND ROAD – UNIT 15  
MOUNT PROSPECT, ILLINOIS 60056

March, 24, 2008

**VIA FACEMAIL 847-428-1576**

Eric Schwab  
Ragnar Benson  
250 S. Northwest Highway  
Park Ridge, Il. 60068

Re: ARBORETUM (South Barrington)

Dear Mr. Eric Schwab

We are writing this letter in response to our last visit of your project at the above location. During that time we noticed a company by the name of *Countryside Landscaping* installing brick pavers. Countryside Landscaping is not a signatory contractor with the Laborers Union. We are requesting you to remove Countryside Landscaping from your project. Under our Collective Bargaining Agreement you have with the Laborers' District Council any sub-contractor performing covered work must have a Collective Bargaining Agreement with the Laborers'. Failure to remove Countryside Landscaping will be a direct Violation of your Agreement with the Laborers' and Ragnar Benson LLC will be held liable for all hours of covered work that Countryside Landscape performs.

Also all clean up on the above mentioned project is covered work, any clean up work performed without the assistance of Laborers will be a Violation of your collective Bargaining Agreement and Ragnar Benson LLC will be held liable for all hours worked.

Thanking you in advance for your assistance in this matter if you have any questions please do not hesitate in contacting us at the above phone number.

Respectfully Your,

Martin Flanagan  
President / Business Manager  
Laborers' Local No. 118

**Construction and General Laborers' District Council of Chicago and Vicinity,  
Laborers' International Union of North America, AFL-CIO**

## GRIEVANCE REPORT FORM

Employer RAGNAR BENSON CONSTRUCTION Date of Report APRIL 22, 2008

Employer Address 250 S. NORTHWEST HIGHWAY

City PARK RIDGE State IL Zip 60068

Phone 847-698-4900 Fax 847-692-9320

Site Where Grievance Arose ARBORETUM (SOUTH BARRINGTON)

Affected Employee(s) ALL

Date of Violation (or first date known) APRIL 22-2008

Applicable Contract (check all that apply):

Article(s) Violated VII PAR 1-2-3

- |  |   |
|--|---|
| <input type="checkbox"/> Independent (ICIA)                    | <input type="checkbox"/> Builders Association (BAC / MARBA) |
| <input type="checkbox"/> Concrete Contractors (CCA)            | <input type="checkbox"/> Mason Contractors (MCA / MARBA)    |
| <input type="checkbox"/> Demolition (CDCA)                     | <input type="checkbox"/> Road Builders (IRBA / MARBA)       |
| <input type="checkbox"/> Environmental (IECA)                  | <input type="checkbox"/> Underground (UCA / MARBA)          |
| <input type="checkbox"/> Wall & Ceiling (GDCNI / CAWCC)        | <input type="checkbox"/> Fox Valley (FVGCA / MARBA)         |
| <input checked="" type="checkbox"/> Lake County (LCCA / MARBA) | <input type="checkbox"/> Other _____                        |

Nature of Violation (attach additional sheets if necessary) SUB- CONTRACT WORK TO  
A NON-BARGAINING UNIT

Remedy Sought REMOVAL OF SUB-CONTRACTOR & PAYMENT OF ALL MONEYS OWED

Monetary Sought (Wages, Work Dues, Welfare & Pension, Training, LECET, LDCLMCC)

\$48.19 PER HOUR PER MAN FROM ABOVE DATE FORWARD  
(Please attach Monetary Work Sheet)

Union Representative Signature Leo Egozer Local Union No. 118

White - District Council • Yellow - Employer • Pink - Local Union



05/MAY. 5. 2008:11:21AM 47692LABORERS DISTRICT COUNCILSON

NO. 1733 P. 4104/005



280 S. NORTHWEST HIGHWAY  
PARK RIDGE, ILLINOIS 60068  
PHONE (847) 698-4900  
FAX (847) 692-9320

April 23, 2008

Laborers Local 118  
832 East Rand Road  
Unit 15  
Mount Prospect, IL 60056

Re: The Arboretum of South Barrington

Attn: Mr. Martin Flanagan  
President/Business Manager  
Laborers Local No. 118  
Via Facsimile: 847-394-4823

Dear Mr. Flanagan:

We are in receipt of the Grievance Form dated April 22, in reference to brick paver installation.

Please be advised that this work activity has not been subcontracted by Ragnar Benson Construction, LLC. to any subcontractors.

Your legal attorney requested that a jobsite meeting be held to review this issue, this meeting was scheduled by Ragnar Benson for Wednesday, April 23 at 1:00 p.m. and Local 118 elected not to attend this meeting.

If you have other concerns, please contact me at 847-698-4900.

Sincerely,

  
Stan Zygowicz  
Vice President of Construction